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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,026	03/02/2004	Richard Leone	L537.12-0001	1377
164 7590 12/14/2007 KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 12/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/792,026

Applicant(s)

LEONE, RICHARD

Examiner

/Stephen J. Castellano/

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☒ Claim(s) 5-9 and 12-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 1-18 are pending.

The amendment filed August 10, 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Figures 1-3 introduce new matter. Figure 1 includes rectangular openings when circular openings had been shown previously in Fig. 1. Figure 2 includes rectangularly shaped openings when previously the openings were of a different shape. Figure 2a includes oval shaped openings when previously the openings were of a different shape. Figure 2b includes diamond shaped openings when previously the openings were of a different shape. Figure 2c includes rectangularly shaped openings when previously the openings were of a different shape. Fig. 2, 2a, 2b and 2c disclose different positioning for the openings than was previously presented. Fig. 2, 2a, 2b, 2c, and 3 disclose rounded bottom corners that were not previously rounded.

Applicant is required to cancel the new matter in the reply to this Office Action.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the triangular shape of the support as stated in claims 5 and 12, the hinge as stated in claim 6, the oval and diamond shaped apertures as stated in claims 7, 8, 13 and 14, and apertures with a longer vertical axis than horizontal axis as stated in claims 9 and 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Applicant may use blocks with text identifying the missing element with a leader line to identify a general location of an element in amending the drawings.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claims 5-9 and 12-15 are objected to as failing to provide a drawing showing the appropriate claimed structure.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The triangular shape of the support as stated in claims 5 and 12. is not supported in the specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-9 and 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "the apertures" in line 1. There is insufficient antecedent basis for this limitation in the claim. claims 8, 9 and 13-15 are similarly indefinite.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Sperl.

Sperl discloses a baking tray, the tray comprising a base, an angled support (sidewall attached to base 6), an aperture (socket 7), stick (shank 8) and food (solid food product M) suspended in air and not in contact with the baking tray, the upper section 6 is metallic and considered an oven-proof material. The baking tray is used in either a conventional or microwave oven. The angled support is inclined with respect to the base.

The aperture of claim 1 is intended for inserting a skewer so that the skewer is generally horizontal and parallel to the base. Claim 1 contains the aperture only and not the skewer. The aperture must be capable of securing the skewer generally horizontal which the inclined aperture would accomplish if the skewer is properly bent.

Re claim 9, the apertures have many axes, the length of the axes may vary as one's imagination may decide a vertical axis is longer than a horizontal axis. Claim 9 doesn't have a meaning consistent with "an aperture elongated in the vertical direction."

Claims 1-5, 8-12 and 14-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Sculuca.

Sculuca discloses a baking tray (skewer holder), the tray comprising a base (121), an angled support (124 or 127), an aperture or apertures (openings in expanded mesh steel material of skewer holder), the steel is considered an oven-proof material. The baking tray is used in grills, ovens or other locations.

Re claims 8 and 14, the expanded mesh steel as shown in Fig. 9A and on the cover sheet of the patent shows diamond shaped apertures.

Re claims 9 and 15, the apertures have many axes, the length of the axes may vary as one's imagination may decide a vertical axis is longer than a horizontal axis. Claims 9 and 15 don't have a meaning consistent with "an aperture elongated in the vertical direction."

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sperl.

Sperl discloses the invention except for the shape of the apertures. Oval and diamond shaped apertures are obvious as a matter of design choice in selecting a shape for the skewer cross section and the aperture which are compatible and aesthetically pleasing in appearance.

The use of several different shapes for the apertures in different orientations shows that the particular shape and orientation of the aperture is of little criticality.

Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sculca.

Sculca discloses the invention except for the shape of the apertures. Oval and diamond shaped apertures are obvious as a matter of design choice in selecting a shape for the skewer cross section and the aperture which are compatible and aesthetically pleasing in appearance. The use of several different shapes for the apertures in different orientations shows that the particular shape and orientation of the aperture is of little criticality.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sperl in view of Blair.

Sperl discloses the invention except for the hinge. Blair teaches a baking tray with a hinge. It would have been obvious to add one or more hinges to modify the baking tray to be collapsible to provide compact storage in a slim or low profile area.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sculca in view of Blair.

Sculca discloses the invention except for the hinge. Blair teaches a baking tray with a hinge. It would have been obvious to add one or more hinges to modify the baking tray to be collapsible to provide compact storage in a slim or low profile area.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781

sjc